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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/599,520	05/11/2007	Robert Poirier	80119/40360 (150026.00000)	1235
29471	7590	07/13/2011	EXAMINER	
MCCRACKEN & FRANK LLP 311 S. WACKER DRIVE SUITE 2500 CHICAGO, IL 60606			LIPTZ, JEFFREY BRIAN	
		ART UNIT	PAPER NUMBER	
		3769		
		MAIL DATE	DELIVERY MODE	
		07/13/2011	PAPER	

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/599,520	<b>Applicant(s)</b> POIRRIER ET AL.
	<b>Examiner</b> JEFFREY LIPITZ	<b>Art Unit</b> 3769

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 25 May 2011.
- 2a) This action is FINAL.      2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-3,6-10 and 13-17 is/are pending in the application.
  - 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-3,6-10 and 13-17 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 07 June 2010 is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-946)
- 3) Information Disclosure Statement(s) (PTO/SB/08)  
 Paper No(s)/Mail Date \_\_\_\_\_
- 4) Interview Summary (PTO-413)  
 Paper No(s)/Mail Date \_\_\_\_\_
- 5) Notice of Informal Patent Application
- 6) Other: \_\_\_\_\_

## DETAILED ACTION

### *Response to Arguments*

Applicant's arguments filed May 25, 2011 with respect to the prior art rejections have been fully considered but they are not persuasive.

Applicant argues that it would not have been obvious to combine the teachings of Gerdt and Potin. In particular, Applicant asserts that there is no portion of Potin that teaches or suggests using the holographic mask to direct light into the eye. However, Potin teaches that "the hologram records the perturbation caused by the visor on the light rays reaching the eye of the helmet wearer." (Col. 10, Lines 64-66). Applicant is also directed to Figure 5, which clearly illustrates providing the optical elements of Potin in order to prevent the angular offset that would otherwise be produced.

Applicant also asserts that the mask of Potin would not be able to focus light within the eye. Applicant is correct that the point of Potin is not to focus light within the eye, but that is the main purpose of Gerdt, which is the primary reference. Applicant's arguments appear to assume that Potin is the primary reference. Gerdt is attempting to provide light within the eye. Potin is merely being cited to show that using a diffractive optical element coupled to visors/glasses to redirect light was known in the art. The purpose of Potin using such an element is to compensate for an angular offset that would otherwise be produced. The light sources of Gerdt are arranged around the periphery and must be coupled to elements that will redirect the light to the eye. For instance, Gerdt discloses using a lens (136; Figure 12) to "modify the transmission angle of the light" (Col. 8, Lines 36-41). Thus, the use of *any* optical element that

enables redirection of the light would have been obvious to use in place of that lens. It was well known to skilled artisans at the time the invention was made to use a diffractive optical element on glasses/visors for that purpose, as disclosed by Potin.

The prior art rejections have been maintained.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1-3, 6-7, 9-10, 13-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gerdt (6235046) in view of Potin (6715150).

Regarding claims 1, 2, 6 and 7, Gerdt teaches a device for implementing a phototherapy method on a set of eyes (Column 2, Lines 30-36) comprising: glasses or spectacles (170) with a plastic frame (180) and lenses (178), and at least one light source (172 or 176 or 202) mounted on or embedded in the lenses or frame (Column 8, Lines 61-67; Column 9, Lines 1-9; Figure 16). Gerdt teaches that specific wavelengths are applied to the retina, but minimal light is applied to the fovea (Column 5, Lines 56-59). Gerdt teaches that the light sources are positioned in a circular configuration around the center of the eye or at the periphery of a field of vision of the individual (Figures 4, 6 and 13). Gerdt teaches using a lens (136; Figure 12) to redirect light to the

eye (Col. 8, Lines 36-41). However, Gerdt does NOT teach an off-axis diffractive optical element.

Attention is directed to Potin who teaches visors for a helmet (Abstract). Potin teaches that the visor includes an image projection source located on the forehead, which is in the periphery of the user (Col. 1, Lines 16-28), and an off-axis diffractive optical element or holographic diffraction mask affixed to a face of the visor (Col. 4, Lines 34-39; Col. 10, Lines 47-67). Potin's rationale for providing the diffractive element is in part to enable the user to look in any direction and see the projected image or a real image clearly. Potin is attempting to solve the problem introduced by the eyes of the user being offset relative to the center of the spherical internal faces of the visor, so that when light is projected from above the forehead or at the periphery of vision (Cl. C2; Figure 5) or from a peripheral external source, it will be corrected relative to the users eyes by the diffractive element.

It would have been advantageous to modify the invention of Gerdt with the diffractive mask of Potin because doing so would have enabled the light emitted from the source to be more accurately angularly focused at the eye, and thus, targets within it. In addition, Potin's mask would reduce distortion caused by the large angles associated with the output of the emitters. Moreover, it would have been obvious to modify Gerdt in view of Potin because both inventors are projecting images and/or patterns into the eye.

Regarding claims 3 and 15, Gerdt teaches angling the light into the eye so that it terminates on the retina and avoids direct contact with the fovea (Column 5, Lines 45-

53). Gerdt also teaches using multiple apertures to direct light into the eye (Figures 4, 6 and 13). An image or rays of light are normally projected onto the retina by converging at a point behind the pupil (Figure 1 ). The greater the angle of entry of the light rays into the eye, relative to the direct line of vision (perpendicular to the center of the pupil), the closer the convergence of the light rays, relative to the pupil. In order for the light to form an image on the retina the light rays must converge before the retina, as illustrated in Figure 1.

Regarding claim 9, Gerdt teaches that the light sources can be LED's (Column 6, Lines 28-67) and that each eye has its own deflection means (lenses and light ring) arranged to cooperate with the light sources of each eye (Column 9, Lines 1-8; Figure 16). Each of the lenses (178) is any of the embodiments of light rings discussed with respect to Figures 4, 6, 13, or 14.

Regarding claims 10 and 13, Gerdt teaches using different numerical apertures for the core and cladding. These properties of the core and cladding alter the angle of exit of the light beam into the light ring. The fibers are embedded in the frame of the glasses with the light source (Column 8, Lines 66-67; Column 9, Lines 1-8). Examiner interprets the frame of the glasses to be at the periphery of the field of vision. Claim 13 recites limitations that are necessitated by the limitations set forth in claim 6 ("emitting light rays are directed into the eyes by deflection means") and claim 10 ("a condenser is arranged so as to direct light rays emitted by each of the light sources onto deflection means").

Regarding claim 14, Gerdt and Potin are silent with respect to the F number of the diffractive lenses. However, Applicant provides no rationale for using an F number of around 0.7. Therefore, the approximate F number of the diffractive lens does not appear to be critical to the practice of the invention. In addition, the optimal F number will depend on the position of the target spot to be illuminated relative to the light source. Applicant discloses that the light rays should be directed to a point slightly behind the pupil of the eye (Pages 4 and 10). Gerdt teaches angling the light onto the retina, which is behind the pupil of the eye. Therefore, Gerdt must have chosen an F number of the diffractive lens that would enable light to be directed in a similar manner.

Regarding claims 16 and 17, Gerdt teaches that some of the lit ends (176; Figure 16) or the places when the light leaves the apertures are positioned above the fovea since they are positioned on the top of the frame (180). This means that the "specific zone" is inherently below the fovea, when the light is emitted from above the fovea. Thus, at the very least, Gerdt's device is capable of providing a specific zone below the fovea, and it would inherently do so in instances in which those sources are primarily used. Furthermore, the method claim could be rejected under 103 as it would be obvious to provide light sources above the fovea or focus the light below the fovea in instances in which the patient is preferentially viewing objects in front of and above their line of sight. Gerdt teaches providing his device so that a patient can undergo the therapy at the same time as performing other activities (Background of the Invention).

Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Gerdt and Potin as applied to claim 6 above, and further in view of Goldman (US 5923398).

Regarding claim 8, Gerdt and Smith do NOT teach using a spectacle attachment to provide the light sources or the deflection means as claimed. However, attention is directed to Goldman who also teaches eyewear for providing retinal stimulation (Column 2, Lines 1-14). Goldman teaches using clip-on elements or spectacle attachments to be attached to the wearer's glasses (Column 2, Lines 34-39; Column 4, Lines 31-36). The remaining limitations of this claim are substantially similar to those of claim 7, rejected supra. It would have been obvious to use spectacle attachments with eyeglasses, because some patients that require the phototherapy treatment offered by Gerdt may need to use corrective lens to read or watch television. It is an object of Gerdt to provide the user with a device that will allow a user to read or watch television while undergoing treatment (Column 5, Lines 50-55).

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JEFFREY LIPITZ whose telephone number is (571)270-5612. The examiner can normally be reached on Monday to Thursday, 10 am to 6:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sam Yao can be reached on (571)272-1224. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/JEFFREY B LIPITZ/  
Examiner, Art Unit 3769

/Henry M. Johnson, III/  
Primary Examiner, Art Unit 3769